

**BOARD OF APPEALS CASE NO. 5157**

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**BEFORE THE**

**APPLICANT: John Healy**

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**ZONING HEARING EXAMINER**

**REQUEST: Special Exceptions to locate  
construction services and commercial equipment  
in the Agricultural District; 2024 Eden Mill Road,  
Pylesville**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 10/24/01 & 10/31/01**

**HEARING DATE: December 17, 2001**

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**Record: 10/25/01 & 11/2/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, John K. Healy is requesting a special exception pursuant to Section 267-53D(1) and 267-53H(1) of the Harford County Code to allow Construction Services and Commercial Vehicles and Equipment Storage in an AG/Agricultural District.

The subject parcel is located at 2024 Eden Mill Road, Pylesville, Maryland 21132 and is more particularly identified on Tax Map 9, Grid 3B, Parcel 79, Lot 6. The subject parcel consists of 21.2904± acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

The Applicant, John Healy appeared and testified that he is the owner of the property and operates Forest Hill Communications from the parcel. The business is involved in laying underground utilities, trenching and boring of both pipe and cable. The witness, referring to a set of 46 photographs marked Applicant's Exhibit 12A through 12 RR, described the property, the proposed storage area for equipment used in the business, the equipment itself and other buildings located on the property. The testimony of the witness was undisputed in this regard and is accepted as a true and accurate description of the property, the buildings thereon and the proposed equipment. The witness stated that only he and his wife work out of the office located on the property. The witness described his business as extending over 3 states. Often, equipment is left on remote job sites so not all of his company equipment is located on the subject parcel at all times. He presently employs 10 persons but has employed up to 40 in the past. Generally 6 of these employees report to the property to pick up equipment, the remainder of his employees go directly to the job sites.

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Normally, hours of operation are Monday through Friday, 7:00 a.m. until 6:00 p.m. The witness, referring to Attachment 3 of the Staff Report, indicated that the area depicted on that exhibit was outlined in yellow and sits about halfway to the rear of his property as one goes from Eden Mill Road. The storage area sits in a corner of the Applicant's irregularly shaped parcel very close to two other Lots identified on Attachment 3, namely Lot Four and Lot Five. The storage area is proposed to be 150 feet by 250 feet in dimension and, according to the Applicant will be screened by fencing and trees. The Applicant proposes to plant Leland Cypress and/or White Pine trees around three sides of the storage area to screen it from view of adjacent residential uses. The fence proposed is an 8 foot high stockade fence. The Applicant stated that he hopes his business prospers allowing him to purchase more equipment in the future which he also plans to store at this location. The Applicant also plans to erect a storage building. Lighting would be placed around the storage area but would be lit only when needed. Lights would be shielded and would not be left on at night. No maintenance other than minor repairs are anticipated by the Applicant.

Ms. Aimee O'Neill appeared and qualified as an expert real estate appraiser. Ms. O'Neill stated that she had been familiar with the subject parcel and surrounding area for fifteen years. She is familiar with other similar uses as those proposed by the Applicant on his property. Based on her experience, such uses, if adequately screened do not impact adjoining property owners and do not adversely impact property values. The witness opined that the proposed use and the proposed location could be adequately screened from other properties with fencing and tree plantings to supplement existing forestation. The witness expressed her opinion that this use at this location would not have any adverse impacts different than similar uses at other locations within the Agricultural District.

A number of neighboring property owners appeared and testified on behalf of the Applicant. John A. Denbo, James O'Sullivan, Teresa O'Sullivan, Douglas Dufor, Jr., Michael McLeary, Michael Cullum, Cliflyn Sadler, Steven W. Sadler, Mr. And Mrs. Jeff Stike, William Troyer, Charles Lynch III, William Wright, and Deborah Trout. The testimony of the neighbors was somewhat repetitive and can be summarized as supporting the Applicant's efforts to clean up what was once a run down farm and being a good neighbor (he apparently does some work in the neighborhood like plowing when necessary).

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It is significant to note, however, that with only one exception, none of these neighbors can see the storage of equipment from their properties and the proposed use and location have no possible way of impacting the use of their property.

Mr. Dennis Sigler appeared on behalf of the Department of Planning and Zoning. Mr. Sigler stated that the proposed use is compatible with other uses commonly found in the Agricultural District and that the Application was consistent with the Master Land Use Plan. The Department of Planning and Zoning recommends approval of the request finding that no particular adverse impacts will result from the proposed use at the proposed location if sufficient screening is provided. The Department is recommending an 8 foot high stockade fence on three sides of the storage area as well as perimeter plantings of Leland Cypress trees.

Mr. Ray Steele appeared in opposition to the Application. Mr. Steele lives on Lot 5, Attachment 3 and his home is approximately 150 feet away from the storage area. The witness indicated that he can see the storage area, the equipment and the vehicles from his property. He stated that the storage area and equipment make a very poor appearance. Mr. Steele stated that he and his wife always dreamed of their home in the country and he commutes 75 miles to work in order to have his dream. The witness objected to the appearance of the storage area, the appearance of the equipment, the commercial look of the use and expressed some concern that his property value would diminish as a result.

Mrs. Linda Steele appeared and reiterated many of the concerns of her husband. Mrs. Steele produced photographs of the storage area and the equipment taken from her property. At this time, the entire storage area and all of the equipment is unscreened from the view of the Steele's which is primarily why the witness objects to the use at the present location. Mrs. Steele described her house as a two-story structure with a second story deck (Protestant's Exhibit 1). According to Mrs. Steele, trees would need to be 30-40 feet tall to completely screen the proposed storage area from the view of her second story deck. Even an 8 foot fence and planting of small trees will not obliterate her view of this storage area and the equipment thereon. Mrs. Steele stated that the area between the storage area of Applicant and her house is the backyard of her home and it gets regular use.

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In addition to the unsightly nature of the equipment storage, the witness objected to the noise of the equipment, particularly because it is so close to her home. One of the witness's concerns was why the storage area had to be so close to her house when the Applicant has over 20 acres. In her opinion the Applicant placed the storage area as far from his own home and Eden Mill Road as possible so he does not have to look at it and other neighbors cannot see it.

Mr. Thomas Napper appeared in opposition to the subject request. Mr. Napper lives at 2027 Telegraph Road, next to the Steele property. Mr. Napper stated that the view of this storage use from the Steele home was very bad. The witness stated that the noise of the equipment was a factor and he believes it would take 30-40 foot trees to completely screen the use from the Steele property. His own home is 2-3 football fields away (200-300 yards) and he can see the storage area in the winter from his home. Additionally, he has a clear view of the trucks stored at the proposed location year round as he traverses the driveway to and from the Steele property.

Mr. Clay Cassell appeared and stated that he lives at 2025 Telegraph Road. He can see the entire storage area when he is one-half way down his driveway. He would not object to the use and storage at that location if trees could be used for screening but he believes trees would need to be 30-40 feet tall in order to screen this use from view.

Mr. Healy, the Applicant was recalled. The witness testified that there was no other location on his 20+ acre farm where a storage area of this size could be located. He explained that most of the topography was rolling and that it would be dangerous to park the heavy equipment on hills where the chance of rolling was likely.

## **CONCLUSION:**

The Applicant, John K. Healy is requesting a special exception pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code to allow Construction Services and Commercial Vehicles and Equipment Storage in an AG/Agricultural District.

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**Section 267-53D(1) of the Harford County Code provides:**

**“Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**

- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
- (c) A minimum parcel area of two (2) acres shall be provided.”**

**Section 267-53H(1) of the Harford County Code provides:**

**“Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”**

**Section 267-52 of the Code provides:**

**“General regulations.**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

Clearly, the Applicant has shown that he can meet some of the standards required by the Harford County for such uses.

1. The subject parcel is more than 2 acres in size. It is 20+ acres.
2. It is zoned Agricultural.
3. A buffer yard of at least 10 feet can be provided.

In dispute is whether the vehicles and equipment can be stored entirely within a building or can be fully screened from view of adjacent residential lots and public roads. The dispute is whether trees can be planted that will be sufficient in height to screen from view any equipment located on the proposed storage site. The Applicant, the Applicant's expert witness and the Department of Planning and Zoning all agree that trees 10-15 feet in height will adequately screen from the view of adjacent property owners this equipment storage area. The Applicant and the Applicant's witnesses all testified that trees 30 to 40 feet in height would be necessary in order to screen this operation as required by the Harford County Code. Although there is a dispute as to the height of the trees, there is agreement that the area can be screened so long as the trees are high enough.

Analyzing the request in light of the provisions of Section 267-9I of the Code, the Hearing Examiner finds that the proposed use will not adversely impact traffic in the neighborhood or the number of persons who live or work there. Nor will the orderly growth of the neighborhood be adversely impacted. The trucks and equipment proposed for use by the Applicant are no more noisy, gaseous and produce no more smoke, fumes, glare or vibration than other types of Agricultural equipment normally associated with farming and other agricultural operations permitted as of right in the Agricultural District.

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There are no historic places, houses of worship, schools, hospitals or similar places of public use impacted by this request. There are no cultural or historic landmarks impacted by the request nor are there sensitive environmental features affected. The use is consistent with generally accepted planning and engineering principles and practices.

The Hearing Examiner finds that the use proposed at this proposed location will not have impacts greater than any similar use regardless of its location within the AG zone and recommends approval subject to the following conditions.

1. The Applicant shall prepare and submit for review and approval to the Department of Planning and Zoning a landscaping plan that will result in the storage area being fully screened from view of adjacent properties and public roads. This may require the erection of a building sufficient in size and height to accommodate the Applicant's equipment.
2. The Applicant shall not increase the size of the storage area without further review and approval by the Board of Appeals.
3. This approval extends to the Applicant only and may not be sold, conveyed or otherwise transferred to another owner.
4. The Applicant shall submit a detailed site plan for review and approval by the Department of Planning and Zoning.
5. The Applicant shall submit for review and approval by the Department of Planning and Zoning a detailed lighting plan.
6. The Applicant shall obtain any and all necessary permits and inspections.

Date      JANUARY 15, 2002

William F. Casey  
Zoning Hearing Examiner